

PART 275—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS: RIGHTS TO FINANCIAL PRIVACY ACT OF 1978

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ENCLOSURE 5 TO PART 275—OBTAINING ACCESS TO FINANCIAL RECORDS OVERSEAS

AUTHORITY: 92 Stat. 3697 et seq. (12 U.S.C. 3401, et seq.)

SOURCE: 45 FR 17576, Mar. 19, 1980, unless otherwise noted. Redesignated at 56 FR 57984, Nov. 15, 1991.

§ 275.1 Purpose.

This part implements Title 12, U.S.C. section 3401, et seq., Pub. L. 95-630, "Right to Financial Privacy Act of 1978," and prescribes the procedures for the Department of Defense to use to gain access to financial records maintained by financial institutions.

§ 275.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Defense Investigative Service, and the National Security Agency (hereafter referred to as the "DoD Components").

(b) Its provisions apply only to financial records maintained by financial institutions as defined in § 275.6(a).

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.3 Policy.

(a) It is the policy of the Department of Defense when obtaining financial records from a financial institution to seek the consent of the customer to whom the record pertains, unless doing so compromises or harmfully delays a legitimate law enforcement inquiry. If the person declines to consent to disclosure, the alternative means of obtaining the records authorized by this part shall be utilized.

(b) The provisions of 12 U.S.C. 3401 et seq. do not govern obtaining access to financial records maintained by military banking contractors located outside of the United States, the District of Columbia, Guam, American Samoa, or the Virgin Islands. The procedures outlined in enclosure 5 may be followed in obtaining financial information from these facilities.

[45 FR 17576, Mar. 19, 1980, as amended at 46 FR 29706, June 3, 1981]

§ 275.4 Information requirements.

The report required by § 275.14 of this part is assigned Report Control Symbol DD-COMP(A)1538.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.5 Responsibilities.

(a) *Heads* of affected DoD Components shall:

(1) Follow the procedures outlined in this part when seeking access to financial records.

(2) Establish procedures for implementing this part within the Component.

(3) Established procedures to ensure that the report required by § 275.14 is forwarded to the Defense Privacy Board, Office of the Deputy Assistant Secretary of Defense (Administration).

(b) The *Deputy Assistant Secretary of Defense (Administration)*, or designee, shall:

(1) Prepare a consolidated DoD annual report required by 12 U.S.C. 3421(b) and § 275.14.

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(2) Provide policy guidance to DoD Components to implement this part.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.6 Definitions.

(a) *Financial institution.* Any office of a bank, savings bank, credit card issuer, industrial loan company, trust company, savings and loan, building and loan, homestead association (including cooperative banks), credit union, or consumer finance institution that is located in any State or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) *Financial record.* An original, its copy, or information known to have been extracted from the original record held by a financial institution that pertains to a customer's relationship with the financial institution.

(c) *Person.* An individual or a partnership of five or less individuals.

(d) *Customer.* Any person or authorized representative of that person who used or is using any service of a financial institution or for whom a financial institution is acting or has acted as fiduciary for an account maintained in the name of that person.

(e) *Law enforcement office.* Any element of a DoD Component authorized by the Component head to conduct law enforcement inquiries.

(f) *Law enforcement inquiry.* A lawful investigation or official proceeding that inquires into a violation of or failure to comply with a criminal or civil statute, or any rule, regulation, or order issued pursuant thereto.

(g) *Personnel security investigation.* An investigation required to determine a person's eligibility for access to classified information, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigations include investigations of subversive affiliations, suitability information, or hostage situations conducted for the purpose of making personnel security determinations; and also include investigations of allegations that arise subsequent to adjudicative action that require resolution to determine an individual's current eligibility for access

to classified information, or assignment or retention in a sensitive position.

(h) *Personnel security element.* Any element of a DoD Component authorized by the Secretary of Defense to conduct personnel security investigations.

§ 275.7 Requesting basic identifying account information.

(a) A DoD law enforcement office may issue a formal written request for basic identifying account information to a financial institution relevant to a legitimate law enforcement inquiry. A request may be issued to a financial institution for any or all of the following identifying data:

- (1) Name.
- (2) Address.
- (3) Account Number.

(4) Type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

(b) A request for disclosure of the above specified basic identifying information concerning a customer's account shall not require any customer notice (§§ 275.9, 275.11, and 275.13), challenge (§ 275.9) or transfer (§ 275.13) procedures. However, this partial exception for basic identifying data shall not alter the mandatory access requirements set forth in §§ 275.8 and 275.9 to obtain the actual financial record itself.

(c) A format for requesting basic identifying account data is set forth in enclosure 1 of this part.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.8 Procedures for obtaining customer's consent.

(a) A DoD law enforcement office or personnel security element seeking access to a person's financial records shall, when feasible, obtain the customer's consent.

(b) Any consent obtained under § 275.8(a) shall:

- (1) Be in writing, signed, and dated.
- (2) Identify the particular financial records that are being disclosed.
- (3) State that the customer may revoke the consent at any time before disclosure.